

### **REMARKS**

The following remarks are submitted to address the above amendments and issues raised in the Official Action mailed January 13, 2004.

A Request for an Extension of Time is filed herewith to extend the time for reply to this Office Action to May 13, 2004.

Claim 2 has been canceled herein. Upon entry of the foregoing amendments, claims 1 and 3-28 are now pending in this application.

Claims 15-20 and 25 stand withdrawn from consideration as being drawn to a non-elected group. Claims 1-5, 12, 14, 26, 27, and 28 stand rejected under 35 USC § 102(b), as being anticipated by Hubbard et al. (U.S. Patent No. 4,347,848). Claims 6-11 stand rejected under 35 USC § 103(a), as being unpatentable over Hubbard et al. Claim 13 stands rejected under 35 USC § 103(a), as being unpatentable over Hubbard et al. in view of Delk et al. (U.S. Patent No. 5,641,325). Claims 21-24 stand rejected under 35 USC § 103(a), as being unpatentable over Hubbard et al. in view of Bride-Flynn (U.S. Patent Application No. US2002/0073731).

No new matter has been added. Support for requested amendments can be found in the original claims and throughout the present specification and drawings. Applicant respectfully requests consideration of the application in light of the above amendments and the following remarks.

### **Specification**

Applicant appreciates the examiner's reminder that ZIPLOCK® is a registered trademark and should be capitalized and accompanied by the generic terminology it modifies. Applicant shall make every effort to respect the proprietary nature of this mark.

**Claims 1-5, 12, 14, 26, 27, and 28— 35 USC § 102(b)**

Claim 2 has been canceled herein. The rejections of claims 1, 3-5, 12, 14, 26, 27, and 28 under 35 USC § 102(b) as being anticipated by Hubbard et al. are respectfully traversed.

Claim 1 of the present invention, as amended, claims “[a] therapeutic bag for treating injury and relieving associated pain comprising: a chamber having two walls of material, each wall having an inside surface, and a mouth and an interior containment pocket formed from the two walls of material; each wall comprising an outer layer, *a middle layer comprising nylon*, and an inner layer; *a mechanism fixedly attached to the inside surfaces* of the two walls of material proximate the mouth of the chamber for sealing the interior containment pocket closed in a substantially leak-proof manner for retaining a hot or cold material within the chamber; and an attachment mechanism fixedly attached to the therapeutic bag for positioning and holding the chamber in a desired location. (Claim 1, emphasis added.)

Claim 26 of the present invention claims “[a] method for therapeutically treating injury and reducing associated pain comprising: positioning a therapeutic bag of claim 1 such that the chamber is in proximity to an area to be treated and securing the therapeutic bag utilizing the attachment mechanism.” (Claim 26.)

The Official Action states that Hubbard et al. teaches a chamber having a mouth, an interior containment pocket, a mechanism for retaining material within the chamber, and tie strings as an attachment mechanism fixedly attached to the bag for positioning and holding the chamber in a desired location. (Official Action, para. 7.)

Hubbard et al. discloses a refillable, sanitary ice pack that contains a generally rectangular envelope having an open end and a closed end and containing a waterproof bag member formed internally thereof. The envelope is formed of a three ply material containing an

inner layer of waterproof material, an intermediate layer of absorbent material, and an outer layer of absorbent material, for example polyester, perforated by a multitude of tiny holes. A pair of tie strings extends longitudinally from each end of the envelope. A closure member having a blade-like member and a sheath member is employed for selectively sealing the bag member after filling with ice. In operation, the closure member is positioned against one side of the ice pack adjacent the throat such as by means of a piece of scotch tape, to hold the blade-like member in proper position. (Hubbard et al., col. 1, lines 37-55; col. 4, lines 32-35; Fig. 2.)

Nowhere does Hubbard et al. disclose “a middle layer comprising nylon” or “a mechanism fixedly attached to the inside surfaces of the two walls of material proximate the mouth of the chamber for sealing the interior containment pocket closed in a substantially leak-proof manner”, as in claims 1 and 26 of the present invention. The examiner asserts that the mechanism for retaining, when clamped to the bag, is fixedly attached to the chamber for sealing the interior compartment closed in a leak-proof manner, and that Hubbard et al. teaches using a piece of tape to hold the mechanism in proper position on the bag. (Official Action, para. 8.) According to *The American Heritage Dictionary of the English Language*, Third Edition, “fixed” is defined as “firmly in position; stationary . . . not subject to change or variation.” Hubbard et al. discloses that the closure member requires positioning against one side of the ice pack such as by means of a piece of scotch tape, to hold the blade-like member in proper position. Consequently, the closure member in Hubbard et al. is a member separate from the ice bag and requires a change in position to attach to the ice bag, which makes the closure member “removably attached” to the ice bag. A piece of scotch tape would only “removably attach” the closure member to the ice bag. As a result, Hubbard et al. fails to disclose each and every element of claims 1 and 26. Therefore, Applicant respectfully submits that Hubbard et al. does not anticipate claims 1 and 26. Claims 3-5, 12, and 14 depend from claim 1, and claims 27 and 28 depend from claim 26. Accordingly, Hubbard does not anticipate claims 3-5, 12, 14, 27, and 28.

For all of these reasons, the Office is respectfully requested to withdraw the rejections of claims 1, 3-5, 12, 14, 26, 27, and 28 under 35 USC § 102(b).

**Claims 6-11— 35 USC § 103(a)**

The rejections of claims 6-11 under 35 USC § 103(a) as being unpatentable over Hubbard et al. are respectfully traversed.

The Official Action states that Hubbard et al. teaches the bag is sealed along the edges at seam 32, and that any conventional means of sealing the plastic sheets together, such as heat sealing or sonic welding, would have been an obvious provision. The Official Action states that Hubbard et al. shows the outer layer, middle layer, and inner layer insulating the bag from the external environment (in Fig. 3). The Official Action states that Hubbard et al. teaches the layers are bonded together. The Official Action states that Hubbard et al. teaches the inner layer is polyethylene and one suitable material for the absorbent layers is polyester fibers, and that any conventional material such as polypropylene would have been an obvious equivalent alternative. (Official Action, para. 13.)

As discussed herein, Hubbard et al. fails to disclose “a middle layer comprising nylon” or “a mechanism fixedly attached to the inside surfaces of the two walls of material proximate the mouth of the chamber for sealing the interior containment pocket closed in a substantially leak-proof manner”, as in claim 1 of the present invention. Accordingly, Hubbard et al. fails to disclose each and every element of claim 1, and is therefore deficient as a reference for claim 1. Claims 6-11 depend from claim 1. Therefore, Applicant respectfully submits that claims 6-11 would not have been obvious to one of ordinary skill in the art in view of Hubbard et al.

In addition, nowhere does Hubbard et al. disclose a therapeutic bag “wherein the first wall and the second wall are *heat sealed* together along at least their two side edges”, as in claim 6 of the present invention (emphasis added). The examiner asserts that “any conventional means

of sealing the plastic sheets together would have been an obvious provision.” (Official Action, para. 13.) Applicant respectfully requests that the examiner provide a reference supporting the assertion that any conventional means of sealing the sheets together would have been obvious. Nowhere does Hubbard et al. disclose (1) an “insulating” layer or an insulating layer that is (2) laminated or (3) adhesively attached to the outer surface of each wall, as in claims 7, 8, and 9, respectively, of the present invention. Nowhere does Hubbard et al. disclose a therapeutic bag wherein “the outer layer comprises non-woven polypropylene, the middle layer comprises nylon, and the inner layer comprises white linear low-density polyethylene”, as in claim 11 of the present invention. Moreover, Hubbard et al. does not provide any suggestion or motivation that heat sealed walls, an insulating layer, or a polypropylene/nylon/polyethylene layer combination be combined with the disclosure of Hubbard et al. to provide what is claimed in claims 6-11 of the present invention.

For all of these reasons, the Office is respectfully requested to withdraw the rejections of claims 6-11 under 35 USC § 103(a).

**Claims 13— 35 USC § 103(a)**

The rejection of claim 13 under 35 USC § 103(a) as being unpatentable over Hubbard et al. in view of Delk et al. is respectfully traversed.

The Official Action states that the tie strings of Hubbard et al. appear to be parallel to the side edges of the bag and that there is no unobviousness to the location of the tie strings. The Official Action states that a long narrow area in a horizontal direction such as shown by Hubbard et al. Fig. 1 would require tie strings to be parallel to the side edges. The Official Action states that Delk et al. teaches tie strings are perpendicular to the side edges, that a long narrow area of application in a vertical direction would require tie strings to be perpendicular to the side edges, and that such details are obvious to one of ordinary skill in the art. (Official Action, para. 14.)

As discussed herein, Hubbard et al. fails to disclose “a middle layer comprising nylon” or “a mechanism fixedly attached to the inside surfaces of the two walls of material proximate the mouth of the chamber for sealing the interior containment pocket closed in a substantially leak-proof manner”, as in claim 1 of the present invention. Thus, Hubbard et al. fails to disclose each and every element of claim 1, and is therefore deficient as a reference for claim 1. Delk et al. also fails to disclose these elements, as in claim 1. Accordingly, Delk et al. fails to overcome the deficiency of Hubbard et al. as a reference. Therefore, Applicant respectfully submits that the combination of these two references does not teach or suggest each and every element of the present invention, nor does either reference suggest such a combination. As a result, claim 1 of the present invention is not obvious over Hubbard et al. in view of Delk et al. Claim 13 depends from claim 1. Accordingly, Applicant respectfully submits that claim 13 would not have been obvious in view of these two references.

For all of these reasons, the Office is respectfully requested to withdraw the rejection of claim 13 under 35 USC § 103(a).

**Claims 21-24— 35 USC § 103(a)**

The rejections of claims 21-24 under 35 USC § 103(a) as being unpatentable over Hubbard et al. in view of Bride-Flynn are respectfully traversed.

Claim 21, as amended, claims “[a] method of making a therapeutic bag for treating injury and relieving associated pain comprising: providing two walls of material, each wall having four edges, an inside surface and an outside surface and an outer layer, *a middle layer comprising nylon*, and an inner layer . . . .” (Claim 21, emphasis added.)

The Official Action states that Hubbard et al. teaches a closure mechanism that is externally applied to the bag for closing the opening of the bag, that Bride-Flynn teaches a closure mechanism that is joined to the inside surface of the bag, that both closure mechanisms

are obvious equivalent alternative ways of doing the same thing, and that it would have been obvious to one of ordinary skill in the art to modify Hubbard et al. to use the closure mechanism as taught by Bride-Flynn instead of the closure mechanism in Hubbard et al. so as to have an integral means of closing the bag. (Official Action, para. 15.)

Nowhere does Hubbard et al. disclose an outer layer, *a middle layer comprising nylon*, and an inner layer, as in claim 21 of the present invention. Accordingly, Hubbard et al. fails to disclose each and every element of, does not anticipate, and is therefore deficient as a reference for claim 21. Bride-Flynn also fails to disclose an outer layer, *a middle layer comprising nylon*, and an inner layer, as in claim 21 of the present invention. Accordingly, Bride-Flynn fails to overcome the deficiency of Hubbard et al. as a reference. Therefore, Applicant respectfully submits that the combination of these two references does not teach or suggest each and every element of the present invention, nor does either reference suggest such a combination. As a result, Applicant respectfully submits that claim 21 of the present invention is not obvious over Hubbard et al. in view of Bride-Flynn. Claims 22-24 depend from claim 21. Accordingly, claims 22-24 would not have been obvious in view of these two references.

In addition, Applicant respectfully requests that the examiner provide a reference in support of the assertion that the ZIPLOCK® type closure mechanism taught by Bride-Flynn and the removably attached, externally applied closure mechanism taught by Hubbard et al. are obvious equivalent alternatives.

For all of these reasons, the Office is respectfully requested to withdraw the rejections of claims 21- 24 under 35 USC § 103(a).

### **CONCLUSION**

Applicant submits that a full and complete response has been made herein to the Official Action and, as such, all pending claims in this application are now in condition for allowance.

Therefore, Applicant respectfully requests early consideration of the present application, entry of all amendments herein requested, withdrawal of all rejections and objections, and allowance of all pending claims.

The Office is respectfully invited to contact J. Michael Boggs at (336) 747-7536, to discuss any matter relating to this application.

Respectfully submitted,

5/13/04  
Date

J. Michael Boggs  
J. Michael Boggs  
Reg. No. 46,563

Kilpatrick Stockton LLP  
1001 West Fourth Street  
Winston-Salem, NC 27101  
(336) 747-7536  
(336) 734-2632 (facsimile)